

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

AMERICAN COUNCIL OF THE BLIND)
OF INDIANA, INDIANA PROTECTION)
AND ADVOCACY SERVICES)
COMMISSION, KRISTIN FLESCHNER,)
RITA KERSH, WANDA TACKETT,)

Plaintiffs,)

vs.)

INDIANA ELECTION COMMISSION,)
INDIVIDUAL MEMBERS OF THE)
INDIANA ELECTION COMMISSION,)
INDIANA SECRETARY OF STATE,)
INDIANA ELECTION DIVISION,)
CO-DIRECTORS OF THE INDIANA)
ELECTION DIVISION,)

Defendants.)

CAUSE NO. 1:20-cv-03118-JMS-MJD
Indianapolis, Indiana
Monday, March 7, 2022
10:07 o'clock a.m.

Before the
HONORABLE JANE MAGNUS-STINSON

TRANSCRIPT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

APPEARANCES:

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Disability Rights Advocates
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Disability Rights Advocates
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FOR THE DEFENDANTS: Office of the Indiana Attorney General
By: Courtney L. Abshire and
Jefferson S. Garn and
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COURT REPORTER: Jean A. Knepley, RDR, CRR, CRC, FCRR
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PROCEEDINGS TAKEN BY MACHINE SHORTHAND
COMPUTER-AIDED TRANSCRIPTION

1 (In open court.)

2 THE COURT: We are here under Cause No. 1:20-cv-3118.
3 This is the case of the American Council of the Blind, et al.
4 against the Indiana Election Commission, et al. Would counsel
5 for Plaintiffs please introduce themselves and who -- whether
6 it is cocounsel or parties -- those who are with them today.
7 Who is going to take the lead?

8 MS. BRANDT-YOUNG: Good morning, Your Honor. My name
9 a Christina Brandt-Young. I am with Disability Rights
10 Advocates on behalf of the Plaintiffs. With me at counsel
11 table from Indiana Disability Rights --

12 MR. CRISHON: I am Tom Crishon, Indiana Disability
13 Rights.

14 MR. ADAMS: Sam Adams, Indiana Disability Rights.

15 MS. BRANDT-YOUNG: Also in the courtroom, Your Honor,
16 today are from -- there are some members of the American
17 Council of the Blind of Indiana, Barbara Salisbury and Dee Ann
18 Hart. Additionally, participating by Zoom, there are several
19 members of the team. We have two attorneys that are on the
20 Zoom, observing this case. Among the individual Plaintiffs,
21 Rita Kersh is participating by Zoom, and there are other
22 members of the American Council of the Blind of Indiana who
23 have joined by Zoom as well.

24 THE COURT: Thank you.

25 For the Defendant?

1 MS. ABSHIRE: Good morning, Your Honor, Courtney
2 Abshire for the Defendants. I also have with me cocounsel.

3 MS. SZYPER: Caryn Szyper, Your Honor, for the
4 Defendants.

5 THE COURT: Good morning.

6 MR. GARN: Jefferson Garn.

7 THE COURT: Good morning. Thank you.

8 MS. ABSHIRE: Thank you.

9 THE COURT: All right, this matter is before the Court
10 for oral argument on the Plaintiffs' motion for preliminary
11 injunction that was filed on February 7th. It has been fully
12 briefed. The Court has reviewed the briefs. The Court has
13 also reviewed the proposed findings of fact and conclusions of
14 law submitted by the parties last Friday. As I said, the
15 matter is here for oral argument. Each side has 45 minutes.
16 Plaintiff does get to go first and last. How would you like to
17 divide your time?

18 MS. BRANDT-YOUNG: Your Honor, if the Court --

19 THE COURT REPORTER: I'm sorry, your mic needs on.

20 MS. BRANDT-YOUNG: Your Honor, if the Court would
21 permit the mask to be off during argument? Thank you.

22 THE COURT: You may.

23 MS. BRANDT-YOUNG: And in terms of the argument,
24 Plaintiffs would like 15 to argue and 30 to rebut.

25 THE COURT: All right, thank you. You may proceed.

1 MS. BRANDT-YOUNG: Your Honor, is it possible to go to
2 the podium for this?

3 THE COURT: Yes.

4 MS. BRANDT-YOUNG: Thank you.

5 THE COURT: Our court reporter is Jean Knepley, for
6 the record.

7 You may proceed.

8 MS. BRANDT-YOUNG: Thank you.

9 So good morning, Your Honor. Again, my name is
10 Christina Brandt-Young of Disability Rights Advocates for the
11 Plaintiffs, American Council of the Blind of Indiana, Wanda
12 Tackett, Rita Kersh, and Kristin Fleschner.

13 All of them are voters with print disabilities which
14 means that they cannot read and mark — and mark a paper ballot
15 by themselves without the assistance of technology. The
16 Plaintiffs are seeking a temporary order for the May 20, 2022
17 election only, directing Defendants to do two things: First,
18 to make Indiana's absentee voter traveling board the most
19 restrictive absentee voting regime in the country for voters
20 with disabilities optional, not mandatory.

21 The second thing that the Plaintiffs are requesting is
22 that the Court direct the Defendants to offer an online remote
23 accessible vote by mail tool so that these voters can mark and
24 return their absentee ballots privately and independently.
25 This is relief that the Plaintiffs have been requesting since

1 2020.

2 Apart from what the Plaintiffs are requesting, the
3 Plaintiffs also note that the Defendants are in the process of
4 creating a system for requesting an accessible absentee ballot.
5 Defendants, however, have not created a corresponding system
6 for producing accessible voting materials for voters to mark.

7 That contradiction cannot be permitted to proceed for
8 the May '22 election either. It will create the very
9 confusion, chaos, and wasted effort that the law seeks to
10 avoid, ordering a remote accessible vote-by-mail tool, which I
11 am going to refer to as an RAVBM, solves that problem.

12 We want to address some of the preliminary issues that
13 the Defendants raise. First, the right to vote absentee at
14 all; and secondly, some complaints under *Purcell v. Gonzalez*.
15 The Americans with Disabilities Act gives the Indiana voters
16 with print disabilities the right to an accessible absentee
17 vote that is separate from the right to vote in person.

18 First of all, we will note that the right of these
19 particular Plaintiffs to vote absentee in Indiana is located in
20 the Indiana Code. Disability is one of those categories. It
21 is right there, and the state can't offer the privilege of the
22 right to vote absentee while simultaneously reserving the right
23 to discriminate against these Plaintiffs when they do it. That
24 is simply not how the Americans with Disabilities Act works.

25 Beyond that as a further justification, as the

1 Defendants note, *Hernandez v. N.Y. State Bd. of Elections* says
2 that as long as the absentee voting program is wildy available
3 to voters without disabilities, it has to be made available to
4 voters with disabilities as well. That is clearly the case
5 here.

6 Ultimately, of the approximately 3 million votes that
7 were cast in Indiana in the 2020 general election, more than
8 half a million of those votes were cast by an absentee ballot
9 sent by mail, e-mail, or fax. This demonstrates that absentee
10 voting is wildy available in Indiana, that Indiana voters
11 without disabilities benefit from having choices in how to vote
12 and that they exercise those choices when it suits them.
13 Voters with disabilities deserve the same.

14 In 2012, the Southern District of New York held that
15 it is abundantly clear that Defendants are obligated to provide
16 a level of access to their voting program beyond the simple
17 assurance that voters with disabilities are able to cast a
18 ballot in some way, shape, or form. That was a case where the
19 Defendants didn't want to provide physical access to their
20 physical polling locations, and they said, "Oh, those voters
21 can vote absentee." It didn't fly.

22 Here, the Defendants are doing it in the opposite
23 direction. They are arguing that because voters with
24 disabilities can vote in person, they don't have to be able to
25 vote in absentee. And the argument didn't work in the one

1 direction in 2012, it shouldn't work in the opposite direction
2 today.

3 As to *Purcell v. Gonzalez*, the Plaintiffs have two
4 points that we think are very, very important. As the Court
5 will recall, *Purcell* has two factors, proximity in time to an
6 election and the complexity of the change requested. And
7 Plaintiffs have two important positions here. One is that
8 considering the changes that are requested here, making the
9 traveling board optional and adding an RAVBM for voters with
10 print disabilities, those simply don't raise the questions of
11 cost confusion or hardship that *Purcell* is concerned with.

12 We are not close to an election for *Purcell* purposes,
13 but furthermore, Defendants also argue simultaneously that they
14 are making plans to serve voters with print disabilities in the
15 May 2022 election, that they should be permitted to proceed
16 with those plans. And the Plaintiffs dispute hotly that those
17 plans are in any way adequate. In fact, we think they are a
18 black hole of nonplanning.

19 But from a personal perspective, the Defendants cannot
20 argue that the Plaintiffs are asking for a brand-new system for
21 voters with print disabilities when they are already
22 implementing one themselves. If it is that much confusion and
23 hardship to add a system for voters with print disabilities and
24 Defendants are, you know, either it is too confusing and it is
25 a personal problem or it is not. The Defendants can't have it

1 both ways, and the Plaintiffs, of course, argue that it is not.

2 Making the traveling board optional is not going to
3 cause cost confusion or hardship that rises to a *Purcell* level.
4 It affects very few voters. So there is very little cost or
5 confusion that is likely to occur, and making the traveling
6 board optional is actually less effort for the counties. They
7 can just mail paper absentee ballots to affected voters rather
8 than organizing timed visits of two volunteer election
9 officials. It is not a complex change, and there is plenty of
10 time to do it in.

11 As to an RAVBM, it is the same situation. It affects
12 very few voters so there is little question of confusion among
13 the electorate, and other states have put in RAVBMs in a matter
14 of weeks -- one week, two weeks. So the burden is, likewise,
15 not high.

16 We want to note the Defendants are already creating an
17 accessible absentee ballot registration system. It is not as
18 if this is happening from scratch, that, and that creation of a
19 system to register for an accessible absentee ballot is a big
20 part of the work. Just the other part is providing the
21 accessible absentee ballots. So Plaintiffs hold there is no
22 *Purcell* problem here.

23 And in terms of the changes that, that we're
24 requesting, the RAVBM itself, going -- skipping briefly to
25 success on the merits. The RAVBM has two justifications on the

1 law. We will note that Indiana voters -- I am sorry, Indiana
2 offers electronic voting via e-mail to certain UOCAVA voters
3 already. They e-mail those ballots to those voters. Those
4 voters e-mail those ballots back, and they are able to complete
5 those ballots in a short period of time privately and
6 independently using the tools that they already have.

7 THE COURT: If I understand you and the arguments,
8 the, the disabled voters in Indiana also should have access to
9 that by the state statute that has been passed, correct?

10 MS. BRANDT-YOUNG: That is exactly right, Your Honor,
11 and there are two justifications under the Americans with
12 Disabilities Act for how that needs to work.

13 First of all, and these are found in 28 CFR
14 35.130(b) (7) and 28 CFR 35.160.

15 Under the Americans with Disabilities Act states have
16 and localities have a duty to provide communication with their
17 citizens that is as effective as their communications with
18 other people furnishing appropriate auxiliary aids and services
19 where it is necessary to make them so and giving primary
20 consideration to the particular aids and services requested by
21 the people at stake "in such a way as to protect the privacy
22 and independence of the individual with the disability." That
23 is what an RAVBM does. An RAVBM is an auxiliary aid or service
24 that protects the privacy and independence of the individual
25 with the disability.

1 THE COURT: Are there other devices or systems that
2 would do the same?

3 MS. BRANDT-YOUNG: Not that would permit the voter to
4 make all of their choices and complete the process completely,
5 privately, and independently. And this goes to the second
6 justification under the law for requiring an RAVBM, and that is
7 the requirement that Defendants make reasonable modifications
8 to their programs when the modifications are necessary to avoid
9 discrimination on the basis of disability. And what is so
10 important about an RAVBM here is that it permits a substitute
11 for the handwritten signature on the secrecy waiver as an
12 identification method.

13 Currently, under the system that exists, voters are
14 required to affirm that they have completed their ballot
15 secretly, which RAVBM is literally the only way for voters to
16 do that and also to make this affirmation and submit it
17 entirely privately. If you go with other methods that — I am
18 sorry, let me back up.

19 The idea is that blind voters cannot produce a
20 signature that is sufficiently consistent to pass the signature
21 match requirement for absentee voters, which leads to a
22 significant risk that their absentee ballots will be
23 disallowed. Three different courts have found that voters with
24 disabilities and elderly voters are more likely to have that
25 problem, that signature match problem, and an RAVBM helps solve

1 that signature match problem in a way that no other auxiliary
2 aid or service does.

3 A better substitute, which the RAVBM permits for
4 identification purposes, are the kinds of methods that people
5 use for online transactions all the time. They use two-factor
6 authentication. They apply their own strong password. The
7 Indiana Election Division or commission or Secretary of State
8 could assign a unique password to every print disabled voter in
9 Indiana that they are aware of that registers, a secret
10 password that only the state knows and the voter knows that
11 would serve this identification match requirement and that
12 voters could enter consistently every time.

13 To demand a handwritten signature for ID purposes when
14 blind voters are less likely to produce a consistent signature
15 in the first place is to elevate the form of that requirement
16 over the substance of it. It is requiring people to perform
17 the same action and the mistaken thought that what is the same
18 must be equal.

19 When the ADA specifically tells us that sometimes to
20 avoid discrimination, states have to make reasonable
21 modifications. That is when a reasonable modification is
22 required, and that is the problem that an RAVBM solves here.

23 THE COURT: You have used 12 minutes. I am just
24 letting you know. You can use it however you want, but I am
25 just keeping you posted.

1 MS. BRANDT-YOUNG: I appreciate it, Your Honor. Thank
2 you.

3 We would like to explain why the Defendants' plans
4 under SEA 398 for the May 2022 election are inadequate to meet
5 the needs of voters with print disabilities here. And again,
6 we think that the planning going on demonstrates that there is
7 not a *Purcell* problem, but there is an ADA problem, Your Honor.

8 Under SEA 398, the Defendants are changing things
9 during this election anyway, and there is no plan — although
10 there is a plan to register voters with print disabilities for
11 an accessible ballot, there is no corresponding plan to make
12 several important voting documents accessible: The secrecy
13 waiver, the ballots, the county specific instructions. There
14 is no work that has been directed or that is actually happening
15 in order to provide those documents to voters with print
16 disabilities if they register.

17 And this is really quite shocking. There are between
18 2,500 and 3,500 ballot styles in Indiana if, as the state says,
19 they are going to provide those as PDFs, then every one of
20 those ballots has to be made accessible by itself. It has to
21 be created as a document, and then, someone has to go in by
22 hand and insert all the form fields, insert all of the tags
23 that correct the reading order so that a screen reader reads it
24 the same way that the eye does. It is incredibly labor
25 intensive work.

1 The state admits that the counties do not have the
2 skills to perform that work. The state admits that they have
3 not informed anyone that they need to hire a vendor to do that
4 work. It will require an astounding number of vendors to get
5 3,500 ballot styles accessible, and yet, there is literally no
6 work being done. There is no planning being done. There is no
7 information.

8 The counties haven't even been informed that they need
9 to enter into these contracts. It is not in the 2022 election
10 administrator's manual. It is not in the SEA 398 policy. It
11 wasn't in the annual election administrator's conference. It
12 is not in any communication at all. No one has been given the
13 responsibility to make absentee ballots accessible so no one
14 will, and what will that lead to?

15 People will register for an accessible absentee
16 ballot, but the counties will do what they always do with
17 e-mail UOCAVA voters, which is e-mail them an inaccessible
18 ballot. Our voters won't be able to read them, and voters with
19 print disabilities, if they even own a printer, will just have
20 to print those ballots out. It will be an e-mail delivery of a
21 paper ballot system. Our clients are not able to fill out
22 those ballots by themselves. They are not permitted to do so
23 with a person of their choice because of the traveling board,
24 and it will lead to the very confusion, cost, and chaos that
25 *Purcell* seeks to avoid.

1 Plaintiffs do not believe there is a *Purcell* problem
2 here, but Defendants' system will not solve a *Purcell* problem
3 if there is one, and it will create a tremendous ADA problem
4 because as we discussed, you know, again, no secrecy waiver is
5 being developed as an accessible document. But there is no PDF
6 secrecy waiver that could be an accessible document. The only
7 method that the Defendants have — they suggest there is no
8 plan, but there is no PDF document for a secrecy waiver that
9 can be accessible to voters with print disabilities.

10 The Defendants' best suggestion is that people should
11 use a mouse or to, to complete a, a signature block. And
12 again, in order to qualify for this program, some of those
13 people are people with dexterity disabilities. They can't
14 operate a mouse. Blind users can't operate a mouse. The whole
15 point of a mouse is to watch what the cursor is doing and match
16 its location and shape with what you want. It is literally —
17 it can't be done. Again, this system, by itself, it is not a
18 system. It is a giant black hole where a system should be, and
19 the Court cannot permit that to proceed either.

20 If the Court has no further questions, I would like to
21 reserve my time.

22 THE COURT: I do have one question. You mentioned
23 before the discrimination. I would like you to list for me all
24 ways in which you believe the current system discriminates
25 against print disabled voters.

1 MS. BRANDT-YOUNG: So the first way in which the
2 current system discriminates against print disabled voters is
3 the requirement of the traveling board.

4 THE COURT: You don't need to say why. I -- if I have
5 a follow-up question, I will ask it. Go ahead.

6 MS. BRANDT-YOUNG: Thank you. That is, in fact, in
7 the briefing.

8 THE COURT: Uh-huh.

9 MS. BRANDT-YOUNG: If the traveling board were made
10 optional instead of mandatory, then, Indiana would shift to a
11 default paper ballot state, and paper ballots are also
12 discriminatory against voters with disabilities. Many, many
13 cases have found that.

14 And the flip of the paper ballot problem is that an
15 RAVBM is the only way that a voter with a print disability can
16 submit a vote privately -- can mark and submit a vote entirely
17 privately and independently, which is the goal for all voters
18 everywhere. It is the only way to preserve their right to a
19 secret ballot they are entitled to under Indiana law.

20 So getting into more of the specifics, what an RAVBM
21 solves is the problem of effective communication that a paper
22 ballot provides. And an RAVBM solves the problem of a
23 signature for identification purposes on the secrecy waiver,
24 which is prohibited by the reasonable modification -- by the
25 reasonable modification requirement. States are required to

1 provide reasonable modifications to their existing services and
2 programs when those modifications are necessary to avoid
3 discrimination on the basis of disability.

4 We think that the Defendants current -- again, there
5 is a plan to create a registration process for under SEA 398.
6 For voters with print disabilities, that is a good thing. But
7 the lack of corresponding planning to create the actual
8 accessible documents for voting, the secrecy waiver, the
9 ballots, the county specific instructions if the county wants
10 to send those out, that, in itself, would also violate the
11 ADA's effective communication requirement.

12 I believe that that answers the question of all the
13 ways that the current situation --

14 THE COURT: Thank you. You can confer with your
15 co-counsel while the other side is arguing. If you think of
16 more, you can tell me when you come back up.

17 MS. BRANDT-YOUNG: Thank you, Your Honor.

18 THE COURT: You have used 19 minutes. Thank you.

19 MS. BRANDT-YOUNG: Thank you, Your Honor.

20 THE COURT: Counsel for the Defendant.

21 MS. ABSHIRE: Your Honor, would you prefer if I use
22 the podium or if I stay at the table?

23 THE COURT: Entirely up to you. If you would like to
24 have your notes there or refer to documents, it is entirely up
25 to you. No problem either way.

1 MS. ABSHIRE: I will stay at the table for now, Your
2 Honor.

3 THE COURT: Thank you.

4 MS. ABSHIRE: Your Honor, the Court should deny
5 Plaintiffs' request for a preliminary injunction for two
6 primary reasons: First, the timing of any injunction by the
7 Court would run afoul of the *Purcell* principle; and second,
8 Plaintiffs have not demonstrated a reasonable likelihood of
9 success on the merits because Indiana's electoral scheme
10 already provides reasonable accommodations to voters who cannot
11 personally mark their ballots.

12 The *Purcell* principle cautions courts for making
13 changes to states' election laws on the eve of an election.
14 The primary election is May 3rd, but state and county election
15 officials, they have already hit the ground running to prepare
16 for the May 3rd primary election.

17 Indiana is less than two weeks away from the start of
18 absentee voting and is less than a month away from the start of
19 early voting. County election officials have to begin sending
20 absentee ballots beginning on March 19th.

21 THE COURT: If you were to tell me a person who has
22 been in charge of these efforts, what is the name of the
23 person? I don't mean the Secretary of State as a figure head.
24 I mean, like, who is the person that is working on the plans to
25 assist print disabled voters in their ability to vote?

1 MS. ABSHIRE: With respect to Senate Enrolled Act 398,
2 Your Honor?

3 THE COURT: That or general. I think that is the main
4 thing we are focusing on today is Senate Enrolled Act 398 and
5 the ways of discrimination that have been noted by counsel with
6 respect to absentee voting.

7 MS. ABSHIRE: With respect to that act, Your Honor, it
8 would be two individuals, the codirectors of the Indiana
9 election.

10 THE COURT: Election board?

11 MS. ABSHIRE: They have to work as a
12 bipartisan effort.

13 THE COURT: Right.

14 MS. ABSHIRE: Generally speaking, though —

15 THE COURT: What are their names?

16 MS. ABSHIRE: I am sorry, Angela Nussmeyer. She is
17 the Democratic codirector.

18 THE COURT: Okay.

19 MS. ABSHIRE: And Jay Bradley King. He is the
20 Republican codirector.

21 THE COURT: Did you say King, K-I-N-G?

22 MS. ABSHIRE: King, yes.

23 THE COURT: He has been there for 30 years?

24 MS. ABSHIRE: A very long time, Your Honor.

25 THE COURT: Okay. All right. Go ahead.

1 MS. ABSHIRE: So in addition to the absentee ballot
2 deadline of March 19th, voter registration remains ongoing.
3 County election officials are receiving and processing voter
4 registration, voter registrations up to April 4th, and then,
5 the next day on April 5th, that is when in-person early voting
6 can begin. And we saw in the last general election about
7 40 percent of Indiana voters took advantage of early voting.

8 Plaintiffs earlier made reference to 61 percent of
9 persons voting absentee in the November 2020 general election.
10 Forty some percent of those were in-person early voting. When
11 it comes to actual voting by mail, that was closer to
12 18 percent, and I would anticipate that several people will
13 take advantage of early voting again this election cycle.

14 THE COURT: Let's focus on absentee ballots, and I
15 want to make sure I get the UOCAVA because the State of Indiana
16 has now afforded print disabled voters the right to vote
17 absentee, and if you could focus on some of the deficiencies.
18 I know you are saying, oh, you can vote these other ways. I
19 would like you to focus on why the current system for absentee
20 voting is not violative of the ADA.

21 MS. ABSHIRE: Sure, Your Honor.

22 Indiana has offered the traveling board to voters who
23 cannot personally mark their ballots. One option is to have
24 the traveling board come and physically mark the ballot on
25 behalf of the voter.

1 THE COURT: Right, but we have the Plaintiff -- but
2 they didn't show.

3 MS. ABSHIRE: I understand that, Your Honor, but that
4 was one discrete instance of the traveling board not showing
5 up, and that would be not the fault of the Defendants,
6 necessarily. That would be the county Board of Elections who
7 should have fulfilled that statutory duty.

8 THE COURT: Okay.

9 MS. ABSHIRE: The other thing is, that the other
10 option is that the travel board can bring an accessible voting
11 machine to the voter's residence so that the voter can
12 privately and independently mark that ballot.

13 THE COURT: Except, didn't you say you don't know how
14 many counties even have them?

15 MS. ABSHIRE: I don't know that number, Your Honor.

16 THE COURT: Okay. And the state really is doing
17 nothing to require that?

18 MS. ABSHIRE: The state -- the Indiana General
19 Assembly has not made that mandatory. The Defendants, the
20 Indiana Election Division, doesn't necessarily have the
21 statutory authority to tell the county election boards they
22 have to do that, but that is an option that is available.
23 County election boards pass a resolution that authorizes the
24 board to bring the voting machine to the voter's residence.

25 THE COURT: You don't know how many do that?

1 MS. ABSHIRE: I don't, Your Honor.

2 And so that accommodation, that is one that does
3 exist; whereas, implementing a remote accessible vote-by-mail
4 tool, and I will let the Plaintiffs call that an RAVBM tool.
5 Implementing an RAVBM tool that Indiana has never used in which
6 county election officials are not trained to use will cause
7 significant strain on what is an already tight primary election
8 schedule where the officials are already starting to administer
9 the election.

10 Notably, Plaintiffs' lawsuit challenges the electoral
11 scheme that was in place in December 2020, well before the
12 passage of Senate Enrolled Act 398, and the Plaintiffs could
13 have filed a preliminary injunction at the time of their
14 lawsuit, but they did not.

15 They also understate the complexity and the difficulty
16 involved with implementing a brand-new system when absentee
17 voting begins in less than two weeks. First, the Defendants
18 would have to select a vendor. If it is a vendor that requires
19 spending money on the vendor, then, they would have to go under
20 the state contracting process, which can take a very long time.
21 But even if Defendants went with one of the options that
22 Plaintiff suggests, there still has to be security testing.
23 there still has to be some quality control testing.

24 The Indiana Election Division and likely the vendor
25 would have to train those county election officials on how to

1 use those tools, and there are --

2 THE COURT: I will turn this back on you a little bit.
3 You criticized the Plaintiff for not doing this earlier. Why
4 hasn't the state done this earlier, the Defendants done this
5 earlier, done everything you just described to get an RAVBM
6 system in place?

7 MS. ABSHIRE: In the Defendants' view it is
8 unnecessary because we already offer those reasonable
9 accommodations through the travel board that can bring the
10 accessible voting machine to the voter's residence.

11 THE COURT: Why is it reasonable to require a print
12 disabled voter to have somebody else fill out their ballot?
13 Why is that reasonable?

14 MS. ABSHIRE: The alternative would be the voter
15 wouldn't be able to fill out the paper ballot on their own. It
16 is meant to be an extra courtesy to the voter so that they can
17 vote privately and independently without having to come into
18 the polls.

19 THE COURT: Don't you agree that under the UOCAVA, a
20 nonprint disabled voter can vote privately and independently?

21 MS. ABSHIRE: That is the goal of Senate Enrolled Act
22 398, Your Honor, is to give one more option to voters with
23 print disabilities.

24 THE COURT: But specifically, our general assembly has
25 said print disabled voters can take advantage of this act.

1 This is a right conferred upon print disabled voters under that
2 act.

3 MS. ABSHIRE: Yes. It is a benefit that has been
4 conferred on --

5 THE COURT: I would say it is a right, not a benefit.
6 It is a right, and so when a right is afforded to able bodied
7 and disabled people, shouldn't that right, then, be just as
8 accessible for the people who are print disabled?

9 MS. ABSHIRE: The Defendants are working on making
10 that accessible option available --

11 THE COURT: Okay.

12 MS. ABSHIRE: -- to voters of print disabilities.
13 They have been working on it since September.

14 THE COURT: What are you doing?

15 MS. ABSHIRE: They have been working on the combined
16 voter registration and application form. Previously, prior to
17 the existence of that form, there was no, there was no way for
18 a voter to apply for this method. So the Defendants have been
19 working on implementing and creating an accessible form that
20 voters with print disabilities can fill out online. That is
21 also web content -- sorry, web content guidelines compliant,
22 and that the voters will be able to use their assistive
23 technology to fill that form out.

24 So among that work, going back a little bit on the
25 timing --

1 THE COURT: Sure.

2 MS. ABSHIRE: -- one of the things that stood out to
3 me was in New York City. It took election officials two weeks
4 to transmit ballot information to their RAVBM vendor, just to
5 transmit the information. That doesn't say anything about how
6 long it took for the vendor to actually make those ballots and
7 distribute those. It doesn't say anything about what kind of
8 security vetting went on or what kind of quality control
9 happened.

10 THE COURT: Can we set aside the deadlines and the
11 time pressures in this case? Is the state considering an RAVBM
12 vendor?

13 MS. ABSHIRE: Not at this time, Your Honor.

14 THE COURT: For any election, ever?

15 MS. ABSHIRE: Not at this time, Your Honor.

16 THE COURT: Okay. Do you know why that is?

17 MS. ABSHIRE: The Defendants think that Senate
18 Enrolled Act 398 will accomplish those same goals. In fact,
19 the Senate Enrolled Act 398 will enable voters to return that
20 ballot electronically to the county election boards through an
21 e-mailed PDF that has been completed. In some cases RAVBMs,
22 they require voters to print the ballot after it has been
23 completed and put it in an envelope and mail it, which also
24 creates issues for voters who have, let's say, manual dexterity
25 disabilities. So neither --

1 THE COURT: They can choose that, right? You can
2 choose to give them options? Okay. I am sorry. Continue. Go
3 ahead.

4 MS. ABSHIRE: And in North Carolina where they already
5 had an RAVBM tool that they utilized for those UOCAVA voters,
6 it took them five weeks just to expand that already available
7 tool to their print disabled voters in their state.

8 THE COURT: So your point would be, then, that -- I
9 recognize you have got time limits coming up here for absentee
10 ballots, etc. But so far you have cited two states; one, where
11 it took a couple of weeks; one, where it took five weeks.
12 Okay. November is how many months away -- eight months away.
13 Are the Defendants looking at a way to make this available for
14 the November election?

15 MS. ABSHIRE: An RAVBM tool?

16 THE COURT: Yes.

17 MS. ABSHIRE: No, Your Honor.

18 THE COURT: And the reason is?

19 MS. ABSHIRE: Because Defendants believe that Senate
20 Enrolled Act 398 will be able to accomplish those same goals.
21 It will provide just as meaningful access to vote privately and
22 independently in the voter's home.

23 THE COURT: Okay.

24 MS. ABSHIRE: I understand that Plaintiffs have argued
25 that under the Americans with Disabilities Act that the

1 Defendants must give primary consideration to their preferred
2 use of auxiliary aids or services, but that is only the case if
3 they are not going to already provide something that is equally
4 as effective that provides as meaningful of access; and
5 ultimately, it will be able to do that.

6 THE COURT: You haven't had to because I don't think
7 you were required to in any way in responding to the motion for
8 preliminary injunction, but is there anywhere in the record
9 where you can point to me this plan that you are talking about
10 that will be just as meaningful?

11 MS. ABSHIRE: Your Honor, in -- I believe it is the
12 Indiana Elections Division's deposition, the 30(b)(6) witness
13 discussed recognizing that the ballots will have to be made
14 accessible. I believe Plaintiffs covered that pretty
15 thoroughly, but there is no actual plan with respect to the
16 accessibility of the PDF ballots in the record.

17 THE COURT: Okay. I, I will find it. Thank you.

18 MS. ABSHIRE: Plaintiffs have suggested that RAVEMs
19 can be successfully implemented in a matter of one to two
20 weeks, but they don't offer very much evidence in support of
21 that claim. First, is a declaration by Miss Lou Ann Blake that
22 says vendors of these remote electronic ballot systems can
23 provide rapid implementation often within a period of days; for
24 instance, enhanced voting claims on its website that, in some
25 cases, it can implement an accessible voting tool for an entire

1 state of in one week. That is one vendor. That vendor is one
2 that costs money. There is no evidence that that would
3 necessarily be the case for Indiana, that enhanced voting could
4 implement that system in one week for the state of Indiana.

5 They also discuss the state of Michigan in the brief
6 in support of their preliminary injunction, and it says that an
7 RAVBM tool was implemented in four days. But that is not
8 actually the case. What had happened in four days was a TRO
9 order that the parties agreed on where Michigan state officials
10 would make the PDF ballot accessible with tags and fill-in
11 fields for the primary election four days later. So it wasn't
12 a use of an RAVBM tool within four days. That eventually was
13 instituted in the proceedings later.

14 And again, they cite to North Carolina, which was a
15 five-week endeavor to expand that already available tool, but
16 even in the absence of timing issues, Your Honor, at the time
17 Plaintiffs filed their lawsuits, Indiana already provided three
18 reasonable accommodations to voters who can't personally mark
19 their ballots. They can vote in person using an accessible
20 voting machine. They can vote in person using assistance of an
21 individual, or they can vote via the travel board, who can
22 bring an accessible voting machine to the voter's home. All --

23 THE COURT: Except you don't know how many counties
24 offer that and how many will do it.

25 MS. ABSHIRE: I don't, Your Honor, but all counties

1 have the capability of doing it. That I can say with
2 confidence.

3 THE COURT: Okay. Go ahead, please.

4 MS. ABSHIRE: So Plaintiffs, they don't challenge
5 Indiana's in-person voting scheme as lacking a reasonable
6 accommodation. The real dispute is whether or not the travel
7 board is enough, and in Defendants' view, it is, in light of
8 the fact that the travel board can bring that accessible voting
9 machine to the voter's residence and mark the ballot privately
10 and independently. It is just not Plaintiffs' preferred
11 option.

12 And some of this, courts where preliminary injunctions
13 were entered in advance of a primary election, the courts did
14 not use the preferred method requested by the Plaintiffs. In
15 *Drenth v. — in Drenth v. Boockvar*, the Plaintiffs wanted to
16 expand the e-mail voting that was available to UOCAVA voters,
17 much like Senate Enrolled Act 398 so that the voters can have
18 an accessible PDF. In that case the complaint was brought 12
19 days before the election, so the Court said there is
20 insufficient time for that process to happen and instead,
21 ordered what the Defendants had offered, which was an
22 accessible write-in ballot.

23 And finally, the Defendants don't have to make a
24 reason — make an accommodation that the Plaintiffs prefer if
25 it will be a fundamental alteration or cause an undo financial

1 or administrative burden.

2 Now, the Plaintiffs cite to *Lamone*, which said that
3 you don't have -- that states cannot rely on their own unique
4 laws or their procedural laws to claim that something will be
5 reasonable accommodation because it will cause the state to
6 violate its own laws. One of the other things that the
7 district court below said was that the analysis would perhaps
8 be different if the Plaintiff sought to gain access to an
9 uncertified tool that had never been used in a real world
10 situation.

11 That is what we have here. Plaintiffs are seeking
12 to -- for the Defendants to implement an RAVBM tool that the
13 states never used with, not long to go before absentee ballot
14 absentee voting begins, and that will, at the very least, cause
15 an undo administrative burden and if not constitute a
16 fundamental alteration.

17 THE COURT: Before you came to court today, did you
18 check on the status of the e-mailed PDF ballot that you have
19 talked about?

20 MS. ABSHIRE: Yes, Your Honor. Well, I checked on
21 Friday.

22 THE COURT: And the papers indicated a March 28th
23 anticipated drop date; is that right?

24 MS. ABSHIRE: That's correct, Your Honor. It was
25 March 28th. It is now -- the vendor has updated the election

1 division and said that the PDF version of the form that can be
2 downloaded from indianavoters.com will be live on the website
3 on March 18th, on or around March 18th.

4 THE COURT: Okay.

5 MS. ABSHIRE: And the actual online application that
6 is accessible for use with assistive technology, that will now
7 be available by April 18th.

8 THE COURT: Okay.

9 MS. ABSHIRE: Your Honor, I will just briefly discuss
10 the remaining injunctive relief factors that I haven't
11 discussed yet.

12 The Plaintiffs won't face irreparable harm because the
13 state already provides the reasonable accommodation of both
14 accessible in-person voting and accessible voting via the
15 travel board. In the *Hernandez v. New York State Bd. of*
16 *Elections* case, they found that there was no actual or imminent
17 irreparable harm where the Defendants were working towards
18 implementing their proposed plan for the PDF absentee ballot
19 marking system in advance of the election.

20 And as I have already discussed a little bit, I don't
21 think the Plaintiffs have convincingly shown that the RAVEM
22 tools will necessarily be anymore effective for the May primary
23 than what is either already available or for Senate Enrolled
24 Act 398. Indiana has actively been working on that combined
25 further registration and application form since September.

1 The counties are aware that they are going to have to
2 e-mail PDF ballots to voters who fill out that form and request
3 one. Contrast that to the RAVBM tool where the counties maybe
4 have never even heard of that tool and certainly aren't
5 expecting to have to implement it or be trained on it.

6 As the Southern District of New York had pointed out,
7 RAVBMs are not necessarily without their flaws. In some cases,
8 they have to -- a voter would have to print the ballot and mail
9 it, perhaps even sign it, and that causes issues for voters who
10 lack the manual dexterity to do so.

11 In 2016, Ohio District Court case *Hindel v. Husted* the
12 Court noted that the three options that the Plaintiff had
13 suggested, Prime III and Maryland's online voting tool -- and
14 this is in 2016. Those two, three options require the voters
15 to print, sign, and return the ballots to the board of
16 elections, and that required the assistance of a third party.

17 Given the lack of time before the election for any
18 kind of user testing or quality control, in addition to simply
19 implementing the tool, the risk is high for something to go
20 wrong and to not have the voter's vote either cast or even
21 counted correctly. It won't be in the public interest to put
22 forth an untested, uncertified tool in such a short time frame.
23 It risks overburdening the county officials, and it risks
24 simply not working.

25 So for all these reasons, the Plaintiffs have not met

1 their heavy burden to show the extraordinary relief of a
2 preliminary injunction is warranted, and the Court should deny
3 their motion.

4 THE COURT: Can I ask you one more question?

5 MS. ABSHIRE: Yes, Your Honor.

6 THE COURT: For what reason is everyone so wedded to
7 the traveling board?

8 MS. ABSHIRE: Well, Your Honor, compare -- I will
9 compare it to the other states where they only offered paper
10 mail-in ballots. This is something that the state has done as
11 a benefit to the voters that other states don't offer, at least
12 not the states that the courts ordered to implement.

13 THE COURT: It is super helpful, and the Plaintiffs
14 say it is the most onerous.

15 MS. ABSHIRE: Well, Your Honor, I understand the
16 Plaintiffs had some issues with it in the last election. I
17 don't believe they have raised any complaints about prior
18 elections and --

19 THE COURT: I think they do to the extent they claim
20 that the use of the traveling board is necessarily going to
21 make the vote not private.

22 MS. ABSHIRE: Sorry, Your Honor. I meant in terms of
23 not showing up or scheduling issues, but in terms of the
24 private and independently, I mean, now all counties have the
25 capability of bringing that accessible voting machine. If Your

1 Honor has no further questions?

2 THE COURT: I have one more question. Where is that,
3 that last statement supported in the record, the counties each
4 have the capability of bringing an accessible voting machine?

5 MS. ABSHIRE: It is in -- if you give me just a
6 second, Your Honor.

7 THE COURT: Yep.

8 MS. ABSHIRE: Your Honor, it is both at Indiana Code
9 Section 3-11-10-26.2, and it is also in Filing No. 91-1 on
10 page 140.

11 THE COURT: Thank you. That is all I have. Thank you
12 so much.

13 MS. ABSHIRE: Thank you, Your Honor.

14 THE COURT: Plaintiffs' reply.

15 MS. BRANDT-YOUNG: Your Honor, may we go off the
16 record for just one minute?

17 THE COURT: Yes, yes.

18 (Off-the-record discussion.)

19 MS. BRANDT-YOUNG: Thank you. I realized that I took
20 off my mask, and then, came right up to the podium and that
21 this was potentially inconsiderate to the court reporter. So I
22 just wanted to check, is that okay?

23 THE COURT: Okay. Thank you. Yes. Go ahead, please.
24 You may proceed.

25 MS. BRANDT-YOUNG: Thank you, Your Honor. To respond

1 to a couple of things that the Defendants have said, Plaintiffs
2 note that the Defendants are currently getting ready to send
3 out paper absentee ballots. We don't think that is a deadline
4 that is germane here.

5 We understand that putting an RAVBM in place could
6 require some preparation time that means that RAVBM ballots
7 would not be ready at the very first moment that paper absentee
8 ballots could be mailed. That is not optimal. It is
9 acceptable, though. As in the *Taliaferro* case, Plaintiffs
10 would prefer to have a few weeks of private and independent
11 voting to no weeks of private and independent voting, which is
12 the option currently on offer.

13 We want to discuss very briefly the access — the idea
14 of bringing an accessible voting machine via the traveling
15 board to someone's home. First of all, as the Court has
16 pointed out, the state does not track which counties exercise
17 that possibility. They literally don't even know how many
18 counties do it. That is well supported in the record that is
19 in Filing 80-7. That is the Indiana Election Division's
20 deposition at page 114, lines 18 through 22.

21 So we don't know how many counties actually can
22 execute that option. Operating an accessible voting machine is
23 different from operating an inaccessible one. There is
24 litigation around the country demonstrating that poll workers
25 frequently don't know how to operate those, and even if those

1 machines were offered, it would only do away with one of the
2 many, many objections to the mandatory traveling board.

3 The traveling board is available at a greatly reduced
4 time window for voting. Paper absentee voters get 45 days.
5 Traveling boards schedule visits only 19 days before the
6 election. Voters who are forced to participate in the system
7 have to choose a day at the convenience of someone else. It
8 forces voters with print disabilities to accept strangers into
9 their homes even during a pandemic without knowing in advance
10 who those strangers will be, hoping it is a stranger and not
11 someone that you know and who will remember you and who you
12 might run into again. Regimes much less restrictive than this
13 have been found to violate both the ADA and the Voting Rights
14 Act. People have the right to choose the assistant of their
15 choice.

16 As to the idea that -- well so we want to talk about a
17 couple of things about SEA 398 and then, the RAVBM issue. The
18 Indiana legislature directed the Defendants here in the passage
19 of SEA 398 to come up with a system for voters with print
20 disabilities that complies with the web content access
21 guidelines. An outstanding way to comply with the web content
22 access guidelines is to put your system on the web, and that is
23 what an RAVBM does.

24 It is probably true that PDF ballots could comply with
25 the web content access guidelines, although, PDF ballots will

1 never be as easy to use or filled out as correctly as an RAVBM
2 ballot would be, and we can go into a lot of detail if the
3 Court is interested on why an HTML-based, web-based system is
4 easier and better for a voter with a print disability to fill
5 out with a computer than a PDF-based ballot.

6 But it kind of doesn't matter because the Defendants
7 demand a secrecy waiver with a handwritten signature, and a
8 handwritten signature will never be compliant with the web
9 content access guidelines in terms of operability and being
10 able to enter it. If you want a handwritten signature, you're
11 either going to have to use a mouse, which again, is
12 inaccessible for the reasons we have already discussed, or you
13 are going to have to do it on paper which suffers from the same
14 problems. Voters with dexterity disabilities still can't sign,
15 and voters who are blind need the assistance of someone else to
16 print something out, flip it so it is at the right orientation
17 and side, point out to them where the signature line is.

18 If you want something that is actually accessible to
19 voters with print disabilities, then, the secrecy waiver takes
20 PDF -- a whole PDF system entirely out of the running. And it
21 is true that there are RAVBMs in the world that are print and
22 mail, are RAVBMs, as the Defendants point out. But those
23 systems differ in a couple of ways.

24 First of all, they don't have the secrecy waiver with
25 the handwritten signature requirement necessarily; and also,

1 very importantly, they don't have them in states where other
2 voters are being delivered e-mail ballots and returning those
3 e-mail ballots easily and simply with the equipment that they
4 already have at home. And that is why an RAVBM solves the
5 problems that we have here.

6 THE COURT: So if I am not a print-disabled voter and
7 I use the e-mail system, what, what applies with respect to the
8 secrecy waiver? How is that handled?

9 MS. BRANDT-YOUNG: Those voters do fill out the
10 secrecy waiver. It is just that those voters are able to vote
11 privately and independently, using the tools that they already
12 have at home. They are able to operate the whole system
13 entirely by themselves.

14 The Defendants testified that usually UOCAVA e-mail
15 voters do have printers. They are e-mailed an inaccessible
16 ballot and an inaccessible secrecy waiver. They print those
17 out on the printers that they have. They sign them and scan
18 them back in usually by taking photographs with their phones,
19 and they attach that to an e-mail and they send it back. That
20 is a system that, again, works for them quickly, privately,
21 independently, secretly, and with the technology that they
22 already have on hand.

23 And what an RAVBM does is permit a voter with a print
24 disability to meet those same characteristics to do things
25 privately, independently, secretly, and with the technology

1 that they already have on hand. I want to point out here that
2 the Defendants claim that these systems are quote, untested.
3 That is simply not true. They are being used currently in over
4 20 states.

5 This technology is widely used and well-known, and no
6 state is using PDFs statewide. No state that I am aware of,
7 anyway, or that our expert is aware of, is using entirely PDFs
8 statewide, and we would like to go into that for a minute.

9 As the Court has noted in the *Taliaferro* case, an
10 order was made, I believe, seven weeks before the election in
11 that case. The Defendants were given five weeks to get their
12 system up and running. They didn't have a voter registration
13 system that specified voters with print disabilities; whereas,
14 these Defendants were already developing one. And then, the
15 Defendants got two weeks of private, independent absentee
16 voting.

17 So that order was made seven weeks ahead of time. The
18 Defendants talk extensively about the New York City case, and
19 that is a rather nuanced situation I have to say, Your Honor.
20 They point out that New York City got Democracy Live up and
21 running in two weeks in that case, and what is so very, very
22 interesting about that case -- and this is a bit of a lot of
23 detail so I hope the Court will hang with me here.

24 THE COURT: Uh-huh.

25 MS. BRANDT-YOUNG: That case was filed on either

1 May 22nd or 28th of 2020. The complaint in the preliminary
2 injunction were filed the same day. That preliminary
3 injunction was settled on June 2nd for an election that was
4 happening on June 23rd.

5 That settlement was for PDF ballots, and New York
6 City, which has half the voters in the state, it has a
7 population of 8.4 million people, did not comply with that
8 settlement by having PDF ballots. They implemented Democracy
9 Live. They implemented Democracy Live in two weeks.

10 So here in the current situation, we are several weeks
11 out from the election. I believe we are eight weeks out from
12 the election. The Defendants say that they can put an
13 accessible absentee registration system online, apparently, in
14 PDF by March 18, online by April 18.

15 If the Court made an order today directing the
16 defendants to implement an RAVBM in four weeks, by April 4th,
17 that would give the Plaintiffs four weeks of accessible
18 absentee voting by May 3rd. And in terms of the criteria that
19 the Court would need to include in such an order the
20 Defendants — I am sorry, the Plaintiffs would suggest a couple
21 of things:

22 First of all, that the traveling board be made
23 optional instead of mandatory, that Defendants be directed to
24 select an RAVBM, that that RAVBM require electronic return,
25 which is necessary because of the secrecy waiver problem, that

1 the RAVBM comply with WCAG Version 2.1, which they say they are
2 familiar with. And other states in this situation have found
3 it useful to require the Defendants also to do certain tracking
4 about the number of people that are using the system, to track
5 how many absentee ballots are requested, how many successful
6 registrations for accessible absentee ballots happen.

7 Sometimes people make mistakes, and just because someone
8 requests it doesn't mean that they qualify for it. So --

9 THE COURT: I am sorry, what was your second criteria,
10 number requested, and what was the second one? Number of --

11 MS. BRANDT-YOUNG: The number of accessible absentee
12 ballots --

13 THE COURT: Okay.

14 MS. BRANDT-YOUNG: -- that are requested and the
15 number of requests that are granted.

16 THE COURT: Uh-huh.

17 MS. BRANDT-YOUNG: The number of accessible absentee
18 ballots sent out to voters, consequently, and how many
19 accessible absentee ballots are returned. If it is possible
20 within the system, the software to track how many accessible
21 ballots were started and how many were finished, that would
22 also be extremely useful data to have.

23 The idea here is that if there is a significant
24 dropoff at any part of the process, that that will help
25 everyone to identify any problems that may be happening.

1 Returning to *Hernandez v. New York State Board of*
2 *Elections*, the opinion that the Defendants cite to is not from
3 the first preliminary injunction in that case. It is from the
4 second preliminary injunction in that case, and that was a
5 very, very different situation from the situation that the
6 Defendants present here.

7 As the Court will recall, the Plaintiffs had already
8 settled the first preliminary injunction intended to be time
9 limited, intended to get accessible absentee ballots into the
10 hands of voters as quickly as possible and at any cost. That
11 was the settlement that was arrived at.

12 Then, Plaintiffs allege that didn't go well and filed
13 a second preliminary injunction for the November election
14 asking for an RAVEM to be used instead, and the Court in that
15 situation found that PDF ballots met the effective
16 communication requirement. The Plaintiffs disagree with that
17 ruling, but what is very, very different about that situation
18 from the situation that we have here is, the Defendants had
19 already done an election on PDF ballots. They had a plan for
20 producing PDF ballots that were accessible, and they had a plan
21 for improving their prior administration of accessible PDF
22 ballots.

23 They were ordered to hire many more vendors to work
24 much more carefully with counties to provide much more
25 guidance. It is really, really difficult to make PDFs properly

1 accessible, and that is why I am not aware of a state anywhere
2 statewide that is currently using PDF statewide as their
3 accessible ballot system.

4 The Defendants raise a question of undue burden and
5 fundamental alteration here. They claim that now that an RAVBM
6 is both of those things. The statutes in question — I should
7 say the regulations in question — require a Defendant who
8 wants to make an undue burden or fundamental alteration defense
9 to make extensive findings and to make those findings in
10 writing about why undue burden or fundamental alteration are
11 supported.

12 The Defendants were deposed extensively about whether
13 they had made such a finding, whether they had had
14 conversations about such a finding, whether they had considered
15 making, having conversations about such a finding. And the
16 answer to all of those things was no.

17 Just as the Court noted earlier, you know, we were
18 told that those findings were never made because an RAVBM had
19 never been considered, and that is an extraordinary thing from
20 a Government entity that is currently having a lawsuit against
21 it demanding an RAVBM. If the Defendants claim now not to have
22 the information that is necessary, that is a classic example of
23 them painting themselves into a corner and then limiting the
24 view.

25 THE COURT: Did we lose our Zoom? All of a sudden the

1 people went off the screen. Anyway. Okay. I see you, though.
2 Go ahead.

3 MS. BRANDT-YOUNG: Thank you.

4 So the undue burden and fundamental alteration defense
5 cannot be used here. The Defendants haven't done what is
6 necessary under the law in order to sustain them.

7 You know, the Defendants talk a lot about how they
8 already provide other methods for voting for voters with
9 disabilities, and it is not enough that people with
10 disabilities are given options if those options are inferior --

11 THE COURT: Right.

12 MS. BRANDT-YOUNG: -- which here, they clearly are,
13 and you know, every voter is entitled to obtain the highest
14 achievable level of privacy and independence that is possible
15 within their own context, and RAVBM can be implemented here in
16 a few weeks. It really can be done, and it is vitally
17 important to insert a plan into the black hole of no plan that
18 we currently have in this situation.

19 The public has a strong interest in exercising the
20 fundamental political right to vote. It is always in the
21 public interest to protect First Amendment liberties.

22 If the Court has no further questions, I have nothing
23 further.

24 THE COURT: You good? Okay. I have no further
25 questions either. Thank you, everyone.

1 MS. BRANDT-YOUNG: Thank you, Your Honor.

2 THE COURT: We appreciate the work that you did ahead
3 of time. It will help us tremendously to get out a timely
4 ruling. Thank you for your presentation, and I would also --
5 let's go off record, please.

6 (Off the record.)

7 (Concluded at 11:09 a.m.)

8 - - -

9 CERTIFICATE OF COURT REPORTER

10

11 I, Jean A. Knepley, hereby certify that the
12 foregoing is a true and correct transcript from reported
13 proceedings in the above-entitled matter.

14

15

16 /S/ Jean A. Knepley	March 28, 2022
JEAN A. KNEPLEY, RDR/CRR/CRC/FCRR	<u>Date</u>
17 Official Court Reporter	
18 Southern District of Indiana	
Indianapolis Division	

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